

No. 12457

United States
Court of Appeals
for the Ninth Circuit.

KURT ADOLPH TAUCHEN,

Appellant,

vs.

BRUCE G. BARBER, District Director, Immigration
and Naturalization Service, San Francisco,
California,

Appellee.

Transcript of Record

Appeal from the United States District Court
Northern District of California,
Southern Division

FILED

APR -5 1950

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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United States of America

PETITION FOR NATURALIZATION

[Under General Provisions of the Nationality Act
of 1940 (Public, No. 853, 76th Cong.)]

To the Honorable the District Court of The United
States at San Francisco, Calif.

This petition for naturalization, hereby made and
filed, respectfully shows:

(1) My full, true, and correct name is Kurt
Adolf Tauchen.

(2) My present place of residence is 1957
Yosemite Ave., Berkeley 7, Calif.

(3) My occupation is Registered Patent Agent.

(4) I am 40 years old.

(5) I was born on December 4, 1906, in Berlin,
Brandenburg, Germany.

(6) My personal description is as follows: Sex
male, color white, complexion fair, color of eyes
grey, color of hair blond, height 5 feet 6 inches,
weight 148 pounds, visible distinctive marks, scars
on chin, forehead and cheek, race white, present
nationality British (by naturalization in 1937).

(7) I am not married * * *

(8) I have no children.

(9) My last place of foreign residence was Chipstead, Surrey, England.

(10) I emigrated to the United States from Surrey, England via Canada.

(11) My lawful entry for permanent residence in the United States was at Rouses Point, N. Y., under the name of Kurt A. Tauchen on Aug. 26, 1938 on the D.&H.R.R. as shown by the certificate of my arrival attached to this petition.

(12) Since my lawful entry for permanent residence I have not been absent from the United States, for a period or periods of 6 months or longer, * * *

(13) I declared my intention to become a citizen of the United States on May 7, 1940 in the District Court of the United States at Chicago, Ill.

(14) It is my intention in good faith to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, State, or sovereignty of whom or which at this time I am a subject or citizen, and it is my intention to reside permanently in the United States.

(15) I am not, and have not been for the period of at least 10 years immediately preceding the date of this petition, an anarchist; nor a believer in the unlawful damage, injury, or destruction of property,

or sabotage; nor a disbeliever in or opposed to organized government; nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government.

(16) I am able to speak the English language (unless physically unable to do so).

(17) I am, and have been during all of the periods required by law, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.

(18) I have resided continuously in the United States of America for the term of 5 years at least immediately preceding the date of this petition, to wit, since Aug. 26, 1938 and continuously in the State in which this petition is made for the term of 6 months at least immediately preceding the date of this petition, to wit, since September 12, 1944.

(19) I have not heretofore made petition for naturalization. * * *

(20) Attached hereto and made a part of this, my petition for naturalization, are my declaration of intention to become a citizen of the United States (if such declaration of intention be required by the naturalization law), a certificate of arrival from the Immigration and Naturalization Service of my said lawful entry into the United States for permanent residence (if such certificate of arrival be required

by the naturalization law), and the affidavits of at least two verifying witnesses required by law.

(21) Wherefore, I, your petitioner for naturalization, pray that I may be admitted a citizen of the United States of America. * * *

(22) I, aforesaid petitioner, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, that the same are true to the best of my own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true, and that this petition is signed by me with my full, true name: So Help Me God.

/s/ KURT ADOLF TAUCHEN.

Affidavit of Witnesses

The following witnesses, each being severally, duly, and respectively sworn, depose and say:

My name is Walter E. Mathi, my occupation is Engineer, I reside at 1810-67th Ave., Oakland, California, and

My name is J. W. Speer, my occupation is Merchant, I reside at 1957 Yosemite Ave., Berkeley, California.

I am a citizen of the United States of America; I have personally known and have been acquainted in the United States with Kurt Adolph Taucher, the petitioner named in the petition for naturaliza-

tion of which this affidavit is a part, since September, 1944, to my personal knowledge the petitioner has resided, immediately preceding the date of filing this petition, in the United States continuously since the date last mentioned, and at Berkeley in the State of California continuously since September, 1944 and I have personal knowledge that the petitioner is and during all such periods has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and in my opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

I do swear (affirm) that the statements of fact I have made in this affidavit of this petition for naturalization subscribed by me are true to the best of my knowledge and belief: So Help Me God.

/s/ WALTER E. MATHI.

/s/ J. W. SPEER.

Subscribed and sworn to before me by above-named petitioner and witness in the respective forms of oath shown in said petition and affidavit in the office of clerk of the said court at San Francisco, California, this 6th day of May, Anno Domini 1947.

I Certify That Certificate of Arrival No. 11-245996 from the Immigration and Naturalization Service, showing the lawful entry for permanent residence of the petitioner above named, together

with Declaration of Intention No. 158380 of such petitioner, has been by me filed with, attached to, and made a part of this petition on this date.

C. W. CALBREATH,
Clerk.

[Seal] /s/ T. L. BALDWIN,
Deputy Clerk.

Oath of Allegiance

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So Help Me God. In acknowledgment whereof I have hereunto affixed my signature.

/s/ KURT ADOLF TAUCHEN.

Sworn to in open court, this day of,
A.D. 19....

C. W. CALBREATH,
Clerk.

* * *

Petition denied: List No. 2266 Oct. 14-1949 failure to establish attachment to U. S. etc.

Petition continued from List 2249 July 11-49.

Reason off calendar.

Cert of loyalty filed Mar. 1, 1949, 10-20-49, filed mot. petnr. to set aside Judgment of denial. 11-3-49. Filed U. S. Memorandum in opposition to alter judgment. 11-3-49. Mot. ord. sub. Petnr. to Nov. 25-49 to ans. memo. & U. S. 10 days for brief. Filed petr's reply Memo. Nov. 23-1949. Dec. 5, 49 Filed U. S. reply. Dec. 9, 1949 filed Order denying Motion to alter judgment. Notice of Appeal filed Jan. 7-50. Jan. 14, 1950 filed reporter's transcript of Oct. 14-1949 hrg.

NATURALIZATION PETITIONS RECOMMENDED TO BE DENIED

Date October 14th, 1949. List No. 2266.

This list consists of Four sheets. Sheet No. 1.

To the Honorable the District Court of the United States, sitting at San Francisco, California:

F. P. Boland, J. F. O'Shea duly designated under the Nationality Act of 1940 (54 Stat. 1156) to conduct preliminary hearings upon petitions for naturalization to the above-named Court and to make findings and recommendations thereon, has personally examined under oath at a preliminary hearing the following Twenty (20) petitioners for naturalization and their required witnesses, has found for

the reasons stated below, that such petitions should not be granted, and therefore recommends that such petitions be denied.

Petition No. 8799-M

Name of Petitioner: Lem Gim Wong.

Reason for Denial: Failure to prosecute (request).

Petition No. 76895

Name of Petitioner: Rosaura Velasquez.

Reason for Denial: Failure to prosecute petition.

Petition No. 77073

Name of Petitioner: Athanosios Zeropetos.

Reason for Denial: Failure to prosecute petition.

Petition No. 81439

Name of Petitioner: Hilda Ursala Jackman.

Reason for Denial: Failure to prosecute (request).

Petition No. 82452

Name of Petitioner: Giuseppina Beria.

Reason for Denial: Failure to prosecute petition.

Petition No. 85719

Name of Petitioner: Kurt Adolf Tauchen.

Reason for Denial: Failure to establish that he has been attached to the principles of the Constitution and well disposed to the good order happiness of the United States.

Petition No. 86202

Name of Petitioner: Rudolfo Alagon Andoy.

Reason for Denial: Failure to establish that he has been a person of good moral character.

Petition No. 86302

Name of Petitioner: Alfio Rubino.

Reason for Denial: Failure to establish that he has been a person of good moral character.

Petition No. 86494

Name of Petitioner: Augusto Lopes Costa.

Reason for Denial: Failure to establish that he has been a person of good moral character.

Petition No. 87987

Name of Petitioner: Emilio De Guzman.

Reason for Denial: Failure to prosecute petition.

Petition No. 88150

Name of Petitioner: Jose Gonzales Reyes.

Reason for Denial: Failure to prosecute petition.

Petition No. 88183

Name of Petitioner: Pilar Franco Ruiz.

Reason for Denial: Failure to prosecute (request).

Petition No. 89114

Name of Petitioner: Harry Copas.

Reason for Denial: Failure to establish that he has been a person of good moral character.

Petition No. 89152

Name of Petitioner: Jose Amador Timada.

Reason for Denial: Failure to establish that he has been a person of good moral character.

Petition No. 89548

Name of Petitioner: Nick Pappademetriou.

Reason for Denial: Failure to prosecute petition.

Petition No. 89983

Name of Petitioner: Pierre Georges Mengin.

Reason for Denial: Failure to prosecute petition.

Petition No. 90174

Name of Petitioner: Pietro Taormina for Rosario Taormina.

Reason for Denial: Failure to prosecute (request).

Petition No. 90337

Name of Petitioner: Gaetano Reale.

Reason for Denial: Failure to prosecute petition.

Petition No. 90820

Name of Petitioner: Sam Miraglia.

Reason for Denial: Failure to establish that he has been a person of good moral character.

Petition No. 90880

Name of Petitioner: Kee Low.

Reason for Denial: Failure to establish that he has been a person of good moral character.

Date October 14th, 1949.

Respectfully submitted,
/s/ F. P. BOLAND.

(Signature of officer in attendance at final hearing)

In the District Court of The United States

Date October 14th, 1949.

List No. 2266.

This list consists of Four sheets.

Sheet No. Two.

ORDER OF COURT

United States of America,
Northern District of California,
Southern Division—ss.

Upon consideration of the petitions for naturalization listed on List No. 2266 sheet One dated October 14th, 1949, presented in open Court this 14th day of October, A.D., 1949, It Is Hereby Ordered that each of the said petitions be, and hereby is, denied, except those petitions listed below.

* * *

It is further ordered that petitions listed below be continued for the reasons stated.

Petition No. 82452

Name of Petitioner: Giuseppina Beria.

Cause for Continuance: Off Calendar.

Petition No. 86494

Name of Petitioner: Augusto Lopes Costa.

Cause for Continuance: Off Calendar (request of petitioner).

Petition No. 87987

Name of Petitioner: Emilio De Guzman.

Cause for Continuance: Off Calendar.

Petition No. 89114

Name of Petitioner: Harry Copas.

Cause for Continuance: Off Calendar (request of petitioner).

Petition No. 90337

Name of Petitioner: Gaetano Reale.

Cause for Continuance: Off Calendar.

Petition No. 90880

Name of Petitioner: Kee Low.

Cause for Continuance: Off Calendar (to be put on calendar of Judge Roche).

By the Court.

/s/ DAL M. LEMMON,
Judge.

In the District Court of the United States, Northern
District of California, Southern Division

FINDINGS AND RECOMMENDATIONS OF
DESIGNATED EXAMINER IMMIGRA-
TION AND NATURALIZATION SERVICE

(Final Hearing: October 14, 1949)

“The findings of any such designated examiner upon any preliminary hearing shall be submitted to the Court at the final hearing on the petition with a recommendation that the petition be granted, or denied, or continued, with the reasons therefor * * *” (8 U.S.A. 733(b).)

Kurt Adolf Tauchen

85719

Petition was filed on May 6, 1947 under the General Provisions of the Nationality Act of 1940.

Petitioner was born in Berlin, Germany on December 4, 1906. In 1937 he became a British subject by naturalization. He has resided continuously in the United States since August 26, 1938, when he was admitted for permanent resident, with the exception of one three-month trip to Europe in 1939.

On December 9, 1941 he was apprehended as a potentially dangerous alien enemy and was interned by order of the Attorney General dated April 1, 1942. On December 7, 1943 he was paroled and effective November 15, 1945 his parole was terminated.

While in internment he stated that he would not bear arms against Great Britain and Germany.

He is not a conscientious objector but put his refusal on the grounds that, despite his objections, he had been classified as a German and a potentially dangerous alien enemy. He would not bear arms against Great Britain because it might be treason.

The Service feels that the attitude of petitioner toward defending this country creates a doubt as to his attachment and loyalty, which doubt should be resolved in favor of the government.

It is therefore recommended that this petition be denied.

A True Copy Attest,

C. W. CALBREATH,
Clerk.

[Seal] By /s/ T. L. BALDWIN,
Deputy Clerk.

[Endorsed]: Filed Oct. 14, 1949.

In the Southern Division of the United States
District Court for the Northern District of
California

No. 55719

In the Matter of the
Naturalization of KURT A. TAUCHEN

Before: Hon. Dal M. Lemmon,
Judge.

REPORTER'S TRANSCRIPT

October 14, 1949

Appearances:

For the Immigration and Naturalization
Service:

FRANCIS P. BOLAND.

For the Applicant:

THEODORE H. LASSAGNE,
Attorney.

The Clerk: Contested naturalization matters.

Mr. Boland: If the Court please, it is customary with the other judges in this court to call matters which involve—that is petitioners who are represented by attorneys first. There are four cases; does your Honor wish to follow that practice?

The Court: Yes.

Mr. Boland: The first case represented by an attorney is No. 8, 55719, K. A. Tauchen. That is a question of lack of attachment.

KURT A. TAUCHEN

Being first duly sworn, was examined as follows:

Examination

By Mr. Boland:

Q. State your name. A. Kurt A. Tauchen.

Q. Now Mr. Tauchen, you were born in Germany, December 5, 1906, weren't you?

A. Yes.

Q. And how old were you when you left Germany for Great Britain?

A. I did not leave Germany for Great Britain. I never lived in Germany. I went to Austria, lived in Vienna. I was about twenty-two when I left Vienna to go to England.

Q. And while in England did you take out British citizenship? A. I did.

Q. Then did you live in England until 1938 when you came to this country?

A. Until 1937 really, or 1938; I had two addresses.

Q. And then you entered the United States lawfully for permanent residence August 26, 1938?

A. That is correct.

Q. You are not married? A. No.

Q. You never were married? A. No.

Q. You were interned, apprehended and interned on December 9, 1941, weren't you? A. Yes.

Q. And then you were released on parole December 7, 1943? A. Yes.

(Testimony of Kurt A. Tauchen.)

Q. Then your parole was terminated November 15, 1945?

A. I am not sure about the latter date; I think it was a year earlier.

Q. You were free at that time? A. Yes.

Q. While you were interned you were questioned by officers of this service, weren't you, in regard to your willingness to bear arms against Germany and Great Britain?

A. I am not sure if I was questioned by officers of this service.

Q. But you were questioned?

A. I was questioned, yes, on various occasions.

Q. And did you state that you would not be willing to bear arms against Great Britain?

A. That is correct. I beg your pardon. Yes, I stated that.

Q. And did you also state that you would not serve against Germany except you would serve against Germany in every way except for combatant services? A. That is correct.

Q. Did you base your objection on religious grounds? A. No.

Q. What was your reason for not being willing to serve against Germany?

A. I must, in order to make myself understood, I must say, before I was interned I was asked on repeated occasions if I was willing to bear arms against Germany and every occasion I answered in the affirmative. But after I was officially classi-

(Testimony of Kurt A. Tauchen.)

fied a German, I was interned for two years as a German National. Then I thought if I answered the question in the affirmative I would be guilty of treason.

Q. And what was your reason for not being willing to bear arms against Great Britain?

A. That was also the reason in the case of Great Britain.

Mr. Boland: The evidence upon which the petitioner was apprehended consisted largely of hearsay and matters which we could not bring into Court, so we are not recommending denial because of the internment or because of the facts which brought about the apprehension; we are recommending denial because of his unwillingness to serve this country in any way in the military forces during the statutory period.

We feel that that indicated a lack of attachment.

Mr. Lassagne: I would ask Your Honor to bear with me to some extent in this proceeding. I have been a member of this bar, of this court some fifteen years, but my practice has been patent litigation.

I appear on behalf of Mr. Tauchen. He is a technical patent man. He has done work for me for five years while he has been living in California.

I think it will be in order to bring out at least two items, and Your Honor may wish to ask the witness some questions after that. I may be a little inexperienced in bringing out the facts you wish

(Testimony of Kurt A. Tauchen.)

to know, but I would ask the witness **first, whether** during the period of his internment or at any time any charges of violation of any law of the United States were brought against him.

The Witness: Never.

Mr. Lassagne: And secondly, I would ask the witness whether if admitted to citizenship on the presently pending petition he would be willing to bear arms against any national.

The Witness: Certainly.

Mr. Lassagne: And then do we understand your refusal to bear arms against Great Britain and Germany at the time you stated you refused to bear arms against them was based upon apprehension that such declaration would not only be dishonorable, but possibly a violation of law by which you were bound by under antecedent citizenship obligations?

The Witness: Yes.

Mr. Lassagne: I think the objection, Your Honor, on the basis of that kind of testimony is a technical one which no doubt the Immigration Service feels at liberty to urge. But this man, as I stated, is a technical patent man; he is acutely conscious of the binding effect of provisions of law and the obligations of honorable conduct, and he feels that having taken a loyalty oath to Great Britain at that time he acquired British citizenship, if while he was still bound by that oath and notwithstanding the fact that he had applied for

(Testimony of Kurt A. Tauchen.)

United States citizenship he stated that he would bear arms against the country he was a citizen of, it would be a dishonorable declaration—but it in no way mitigates against his willingness to bear arms. He has declared on behalf of the United States that as soon as he becomes a citizen of this country the same thing was applicable to his statements with respect to Germany. When after he was interned and before he was officially classified by reason of the document into citizenship as a German for purposes of internment, he stated he was willing to bear arms against Germany. Then it was only after he was apprehended he thought he might be liable to some legal penalties for such a declaration by reason of the United States having classified him as a German and the possibility he might even be deported. In those days, no one knew what would happen. He renounced that willingness and stated he would not bear arms against Germany, although willing to engage and did engage in non-combatant activities in support of the United States War Effort.

The Court: What did he do?

The Witness: In the internment camp I volunteered to work as a lumberjack to clear artillery ranges. And when in internment we were asked to volunteer to do work for the Army. I volunteered and I worked, I cleared artillery ranges in a forest near there, a dangerous job, not only the job itself, but because of the internees. They assumed a very hostile attitude.

(Testimony of Kurt A. Tauchen.)

Mr. Boland: I would like to point out to the Court that Section 307 of the Nationality Act, Subdivision 8, provides that no person except as hereinafter provided in this Act shall be naturalized unless such petitioner—one, two and three, the three subdivisions—the third subdivision provides during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.

Now, a person who will not bear arms without qualification for the United States, unless it is based on religious scruples, cannot be said during that statutory period to have been attached to our form of Government.

Mr. Lassagne: Might I add one word? That I can't think the law could be construed to require a person to be willing to permit that which might be a crime, a dishonorable act in violation of laws before he may be bound as a matter of attachment.

The Court: Of course, the contention of the Naturalization Service is entirely based upon the statement he having made to the Naturalization Service he would not bear arms against either England or Germany.

It is submitted; call the next one.

(Application denied.)

[Endorsed]: Filed Jan. 14, 1950.

[Title of District Court and Cause.]

MOTION UNDER F R C P RULE 59(e)
TO ALTER JUDGMENT

To the Honorable United States District Court for
the Northern District of California, Southern
Division:

Now comes the applicant, Kurt Adolph Tauchen,
by his attorney, and respectfully moves the Court
to alter the judgment entered on October 14th, 1949
denying applicant's petition for admission to citi-
zenship by granting said petition.

In support of this motion, applicant relies upon
the attached Memorandum of Points and Authori-
ties and submits the motion thereon, waiving oral
hearing.

Dated at San Francisco, California, this 21st day
of October, 1949.

KURT ADOLPH TAUCHEN
By /s/ THEODORE H. LASSAGNE,
His Attorney.

Memorandum of Points and Authorities

The judgment herein denies applicant's petition
for admission to citizenship on the ground that he
has failed to establish that he has been "attached
to the principles of the Constitution" during the
period relied upon by law.

The sole basis upon which it was contended that
lack of such attachment was demonstrated were
applicant's statements:

1. That while classified as a German by the United States he would not bear arms against that country; and

2. That while he remained a subject of Great Britain he would not bear arms against that country.

The attorney for the Immigration and Naturalization Service expressly disclaimed any other ground of objection to applicant's naturalization.

The present motion is brought for the purpose of respectfully directing the attention of the Court to authorities which, it is submitted, establish that statements of this kind are not any evidence whatever of lack of attachment to the principles of the Constitution; which authorities counsel was unable to bring to the attention of the Court at the hearing.

The cases relied upon are:

In re Siem, 284 Fed. 868 (D.C. Mont. 1921);
and

U. S. vs. Siem, 299 Fed. 582 (CCA 9; 1924).

Lasse A. Siem was a Norwegian citizen whose application for admission to citizenship was opposed on the ground that during World War I he had claimed draft exemption because of his alienage; it being urged that this demonstrated lack of "attachment to the principles of the Constitution." Judge Borquin overruled the objection in an elaborate opinion which makes very clear the analogy between that case and the present one.

In the companion case, the United States petitioned to cancel Siem's citizenship on the same

ground, but Judge Borquin's denial of such cancellation was affirmed by our Circuit Court of Appeals.

In so far as the present applicant's case differs from the Siem case, it differs in aspects more favorable to applicant. Siem, as a citizen of a neutral country, was unwilling to bear arms against any adversary of the United States; Tauchen is perfectly willing to bear arms against any adversary of this country upon becoming its citizen, and has qualified his willingness, while still an alien, only by declining to commit himself to treason against a country of which he would be regarded as a citizen under international law.

Since the cited cases make it clear that such claims of exemption from military service, being proper under our laws, do not evidence any lack of attachment to the principles of the Constitution, and applicant's statements taken in their entirety amount to nothing more than such a claim of exemption, it is believed proper to take this means to direct the attention of the Court to these authorities, and to request reconsideration and alteration of the present judgment.

Respectfully submitted,

/s/ THEODORE H. LASSAGNE,
Attorney for Applicant.

Affidavit of service by mail.

[Endorsed]: Filed Oct. 20, 1949.

[Title of District Court and Cause.]

ORDER

The designated examiner held a preliminary hearing and submitted to the court at the final hearing on the petition of Kurt Adolph Tauchen for naturalization his recommendation that the same be denied upon the ground that there was a doubt as to petitioner's attachment and loyalty. The petition was denied. A motion under Rule 59(e) is before the court. The motion seeks to alter the judgment by granting the petition.

Petitioner was born in Berlin, Germany, December 4, 1906. He lived in Vienna, Austria, until he was twenty-two years of age, at which age he took up his residence in England. There he took out British citizenship. In 1938 he came to this country from England. He has resided here continuously since then. On December 9, 1941, he was apprehended as a potentially dangerous alien enemy and was interned by order of the Attorney General dated April 1, 1942. He was paroled on December 7, 1943. His petition was filed May 6, 1947. While in internment he was questioned on various occasions and stated that he would not be willing to bear arms against Great Britain and that he would not serve against Germany. He did state to his questioners that he would serve the United States "in every way except for combatant services." He admitted that his objection was not on religious grounds. His

reason now given for the position taken by him was, in his own words: "I must, in order to make myself understood, I must say, before I was interned I was asked on repeated occasions if I was willing to bear arms against Germany and every occasion I answered in the affirmative. But after I was officilaly classified a German, I was interned for two years as a German National. Then I thought if I answered the question in the affirmative I could be guilty of treason." He gave the same reason for his not being willing to bear arms against Great Britain. Later at the hearing his counsel brought out through further questioning that his refusal was based upon an apprehension that declaration of willingness would not only be dishonorable but possibly a violation of law in the light of his antecedent citizenship obligations and that if the pending petition were granted he would be willing to bear arms against any nation with which the United States might be involved in war.

We must look to petitioner's statements when made to determine his then attitude. His present explanations and elaborations are relevant but not controlling. His former declarations were unequivocal. He is a man of education. He speaks, and has more than an average understanding of, the English language. If the statements he then made did not convey his thoughts, he could have qualified them. The interpretation he now gives should have been given then if what he then said did not express his attitude. The conclusion is logical that what he did say was what he intended to say and

what he intended his listeners to understand him to say.

Section 707 of 8 U.S.C.A. provides in part that no person shall be naturalized unless for the period of five years immediately preceding the filing of his petition he has been attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. The burden of proving that for that period he was so attached and so disposed is upon the petitioner.¹ He has failed to sustain that burden. He is not a conscientious objector. He deliberately stated that he would not bear arms against two designated foreign countries. This shows lack of attachment to the principles of the Constitution and a disposition other than to the good order and happiness of the United States.²

The motion to alter the judgment by granting the petition is denied.

Dated: December 8, 1949.

/s/ DAL M. LEMMON,

United States District Judge.

[Endorsed]: Filed Dec. 8, 1949.

¹United States v. Schwimmer, 279 U.S. 644; United States v. Macintosh, 283 U.S. 605; Lakebo v. Carr, 111 Fed. 2d 732; Allan v. United States, 115 Fed. 2d 804; Wixman v. United States, 167 Fed. 2d 808.

²In re MacKay, 71 F. Supp. 397; United States v. Schwimmer, *supra*; In re Losey, 39 F. Supp. 37.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Comes now petitioner Kurt Adolph Tauchen, above-named, and gives notice that he hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment denying his petition for naturalization entered in this matter on October 14, 1949, and from the order denying petitioner's motion to alter said judgment entered in this matter on December 8, 1949.

San Francisco, California, January 6, 1950.

/s/ THEODORE H. LASSAGNE,
Attorney for Petitioner.

[Endorsed]: Filed Jan. 7, 1950.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Comes now Kurt Adolph Tauchen, petitioner-appellant, and pursuant to Rule 75(a) and (o) of the Federal Rules of Civil Procedure and Rule 11 (as amended January 1, 1949) of the Rules of Practice of the United States Court of Appeals for the Ninth Circuit, designates the following portions of the record, proceedings and evidence to be contained in the record on appeal:

1. Petition for Naturalization.
2. List 2266 (Form N-484) of Naturalization Petitions Recommended to be Denied, or certified copy thereof.
3. Order (Form N-484A) denying Petition for Naturalization, or certified copy thereof.
4. Findings and Recommendations of the Designated Examiner filed October 14, 1949.
5. Reporter's Transcript of Proceedings in open Court before the Honorable Dal M. Lemmon on October 14, 1949.
6. Motion to Alter Judgment filed October 10, 1949.
7. Order on Motion to Alter Judgment filed December 8, 1949.
8. Notice of Appeal filed January 7, 1950.
9. Designation of Contents of Record on Appeal (this paper).

Dated at San Francisco, California, this 11th day of January, 1950.

/s/ THEODORE H. LASSAGNE,
Attorney for
Petitioner-Appellant.

Affidavit of service by mail.

[Endorsed]: Filed Jan. 12, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK
TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing documents, listed below, are the originals, or true and correct copies, in the above-entitled case, and that they constitute the Record on Appeal herein, as designated by the Appellant, to-wit:

Copy of the Petition for Naturalization.

Copy of Naturalization Petitions Recommended to be Denied.

Copy of Order of Court Denying Petition for Naturalization.

Findings and Recommendations of Designated Examiner Immigration and Naturalization Service.

Reporter's Transcript of October 14, 1949.

Motion Under F.R.C.P. Rule 59(e) to Alter Judgment.

Order Denying Motion to Alter Judgment

Notice of Appeal.

Designation of Contents of Record on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 18th day of January, A.D. 1950.

C. W. CALBREATH,

Clerk.

[Seal] By /s/ M. E. VAN BUREN,

Deputy Clerk.

[Endorsed]: No. 12457. United States Court of Appeals for the Ninth Circuit. Kurt Adolph Tauchen, Appellant, vs. Bruce G. Barber, District Director, Immigration and Naturalization Service, San Francisco, California, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed January 18, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit
Appeal No. 12457

KURT ADOLPH TAUCHEN,

Appellant,

vs.

BRUCE G. BARBER, District Director, etc.

Appellee.

CONCISE STATEMENT OF POINTS ON
WHICH APPELLANT INTENDS TO
RELY ON APPEAL

Comes now appellant, above named, and makes the following concise statement of the points on which he intends to rely in the United States Court

of Appeals for the Ninth Circuit on appeal from the Judgment entered on October 14, 1949, in this matter, and from the order denying petitioner-appellant's motion to alter said judgment entered on December 8, 1949:

1. The District Court erred in holding that petitioner evidenced lack of attachment to the principles of the Constitution by stating that he was unwilling to bear arms against countries to which he owed the allegiance of a citizen, until admitted to United States citizenship.

2. The District Court erred in finding that petitioner's statements were unqualified by such explanation, when made.

Dated at San Francisco, California, this 2nd day of February, 1950.

/s/ THEODORE H. LASSAGNE,
Attorney for Appellant.

Affidavit of service by mail attached.

[Endorsed]: Filed Feb. 3, 1950.

[Title of Court of Appeals and Cause.]

APPELLANT'S DESIGNATION

Appellant, Kurt Adolph Tauchen, hereby adopts the designation of contents of record on appeal, heretofore filed in the United States District Court, and already a part of the record on appeal herein,

and in addition thereto, this Appellant's Designation and the Concise Statement of Points on which Appellant Intends to Rely on Appeal, filed concurrently herewith, as his designation on Appeal of the record to be printed.

Dated at San Francisco, California, this 2nd day of February, 1950.

/s/ THEODORE H. LASSAGNE,
Attorney for Appellant.

Affidavit of service by mail attached.

[Endorsed]: Filed Feb. 3, 1950.